IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15963 of 2005
With
SPECIAL CIVIL APPLICATION No. 18475 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

CHAMPAKLAL D.PRAJAPATI - Respondent(s)

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Appearance :

SCA No.15963 of 2005
MRS FALGUNI D PATEL for Petitioner(s) : 1,
MR GK RATHOD for Respondent(s) : 1,
MR MUKESH H RATHOD for Respondent(s) : 1,

SCA No.18475 of 2005
MR MUKESH H RATHOD for the petitioner
MRS FALGUNI D PATEL for the respondent
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/09/2005

ORAL JUDGMENT

Special Civil Application No.15963 of 2005 has been filed by the S.T.Corporation challenging part of the award dated 20th January 2005 passed by the Industrial, Ahmedabad to the extent the same is against the Corporation. Special Civil Application No.18475 of 2005 has been fled by the workman concerned challenging the same award to the extent the same is against the workman. Both these petitions have been heard together and are being disposed of by this common order.

2. The workman concerned was discharging his duties as Clerk with the ST Corporation. Two chargesheets were issued against him. By charge-sheet dated 17.1.97, it was alleged against the workman that he had acted in a negligent manner due to which Conductor had committed misappropriation of funds. This chargesheet resulted into punishment of withholding of one increment with future effect being imposed on the workman. Another charge-sheet was also issued against the workman in the year 1990 alleging that the workman had remained unauhorizedly absent for long duration. Initially, he was dismissed from service as per the order dated 26.10.90. In first appeal, the order of dismissal was set aside and punishment of withholding of three increments

with future effect was imposed.

3. The workman challenged both the penalties before the Industrial Tribunal in Reference (IT) No.264 of 2000. The reference was allowed in part. The punishment of withholding of one increment pursuant to the chargesheet dated 17.1.97 was set aside. It was observed that the workman had no dishonest intention. It was further observed that the reporter was not examined during the course of the inquiry. It was observed that the Conductor was not examined. It was, therefore, concluded that the finding of the Inquiry Report are not supported by the evidence on record. On the basis of these conclusions, the Industrial Tribunal was pleased to set aside the punishment order dated 7.10.97 withholding one increment of the workman with future effect.

4. The ST Corporation has challenged this portion of the award. I find that the conclusions of the Industrial Tribunal are on the basis of the material on record and are purely factual findings. In that view of the matter, in exercise of powers under Article 226 and 227 of the Constitution, no interference is called for. Special Civil Application No.15963 of 2005 filed by the ST

Corporation, therefore, deserves to be dismissed.

5. With respect to the punishment order of withholding of three increments with future effect passed by the Appellate Authority on 16.9.91, the Industrial Tribunal observed that the reference has been raised after nearly 10 years. On account of gross delay, the ST Corporation was not able to produce the record of the departmental inquiry. The Corporation had contended before the Tribunal that as per their rules, the record is preserved for a period of five years. The Tribunal was of the opinion that on account of delay, the Corporation was not in a position to produce the documents and the workman, therefore, cannot get any relief. The Tribunal therefore rejected the reference in so far as the penalty of withholding of three increments is concerned.

6. The conclusions of the Industrial Tribunal in this regard are justified. When the workman raised the dispute after a long and inordinate delay and such delay had resulted into creating a handicap for the employer to produce necessary documents on record, the workman cannot take advantage of such a situation. Primarily the workman had approached the Industrial Tribunal

challenging the departmental inquiry and the resultant punishment, it was his duty to produce necessary document on record to establish that the punishment order was illegal. The workman had not produced any documents to permit the Industrial Tribunal to come to the conclusion that the order of punishment was illegal. In that view of the matter, the Industrial Tribunal was justified in not interfering with the punishment order.

7. Learned advocate Shri Rathod appearing for the workman relied on a decision of the Hon'ble Supreme Court in the case of Shahaji v. Executive Engineer, PWD, 2005 (5) SCALE 261. On the basis of the said decision, he contended that the Industrial Tribunal could not have rejected the reference only on the ground of delay and once the reference was made, the Tribunal had to decide the same on its merits. The factual situation in the present case is somewhat different. As noted earlier, the workman failed to successfully challenge the penalty. On account of delay, the employer was unable to produce the documents. The workman cannot take advantage of such a situation and contend that the reference ought to have been allowed simply because the employer could not produce documents due to gross delay on the part of the

workman. In that view of the matter, the Industrial Tribunal committed no error in rejecting the reference of the workman insofar as the punishment of withholding of three increments is concerned. Therefore, Special Civil Application No.18475 of 2005 is also required to be rejected.

8. In the result, both the petitions are rejected. Rule in Special Civil Application No.15963 of 2005 is discharged. No order as to costs.

(Akil Kureshi, J.)

(vjn)